

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BRIAN R. LOCKE,

Plaintiff,

v.

MATTHEW FRANK,
GREGORY GRAMS and
JOHN DOE 1-35,

Defendants.

MEMORANDUM

3:07-cv-00480-jcs

On February 11, 2008, I denied plaintiff Brian Locke leave to proceed in forma pauperis on appeal from the judgment entered in this case on January 31, 2008, after concluding that he struck out under 28 U.S.C. § 1915(g). Plaintiff promptly filed a motion for reconsideration of that order, which I denied on February 19, 2008. In the February 19 order, I told plaintiff that if he believed this court erred in denying him pauper status on appeal, his recourse was to file a motion for leave to proceed in forma pauperis directly with the court of appeals pursuant to Fed. R. Civ. P. 24, and allow the circuit court to determine whether this court's three-strike determination was erroneous. Rather than finding error, however, the court of appeals implicitly concurred in this court's ruling when it denied

plaintiff leave to proceed in forma pauperis on appeal in an order dated June 6, 2008, and directed him to pay the \$455 filing fee. Now plaintiff has submitted a letter postmarked September 11, 2008, in which he asks once again for reconsideration of the determination made in the February 11, 2008 order that he struck out.

As plaintiff surely must be aware, it is far too late for him to be challenging his three-strike status in the context of this case. If at some future time he files a new lawsuit and requests pauper status, he is free to submit proof in support of his in forma pauperis request that the strikes that have been counted against him should not have been so counted. Plaintiff should bear in mind, however, that even if he succeeds in showing that one or more of the three cases listed in this court's February 11 order should not have been counted as a strike, his three-strike status may remain intact in light of the number of other cases and appeals listed in the court's Pacer System that appear to have earned him strikes. See, e.g., Locke v. Frank, 04-cv-653-jcs (W.D. Wis. Sept. 10, 2004) (order granting leave to proceed in part but denying leave to proceed against three prison officials); Locke v. Bissonette, 07-cv-989-jcs (7th Cir. June 11, 2007) (dismissal of frivolous appeal); and Locke v. U.S. Dist.

Ct., 08-cv-678-rtr (E.D. Wis. Aug. 20, 2008) (dismissal of frivolous action).

Entered this 17th day of September, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge